

MOTION BY SUPERVISOR ZEV YAROSLAVSKY

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The County has repeatedly experienced difficulty in completing high-profile procurement processes. This has occurred with many different sorts of procurements, including those for low-cost services (the contract for housekeeping in Department of Health Services facilities); high-cost services (GAIN case management); and design and construction services (the Hall of Justice). Perhaps the most problematic area for contracting is technology, where the County and its associated agencies have experienced repeated difficulties in procurements related to the LA-RICS project.

Sometimes, the difficulty in completing a procurement occurs because a non-recommended bidder files a protest. Under County policies a non-recommended bidder is given one, and sometimes two, opportunities to protest a non-award. In one recent case, County officials mistakenly stated in the bid documents that two such opportunities would be provided, when County policy covering that sort of procurement allowed for only one.

The County is not required to postpone a contract award while a protest is underway. However, County staff frequently recommends such a postponement, in one

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instance even ordering a halt to time-sensitive work when a second-level protest was filed. This conservative approach has resulted in lengthy extensions for existing service providers, and has caused serious problems for recommended new contractors whose employees and sub-contractors must remain “on hold” while the County sorts through the protests. County policy in this arena should be re-examined and clarified to improve the County’s ability to fairly and expeditiously select and retain the most-qualified contractors and service providers.

But increasingly, the problem has arisen because of the unique, ever-changing, high-tech nature of many procurements. One way to improve this situation may be to preface high-profile procurements with the issuance of draft requests for proposals (RFPs). Draft RFPs have been used by government agencies at the local, state and federal levels including Los Angeles World Airports, the California High Speed Rail Authority, NASA, the U.S. Air Force and the U.S. Coast Guard. The concept here is that proposers are given a period of time in which to comment on the draft RFP. The procuring agency may utilize an interactive, iterative process involving potential proposers in offering, exchanging and evaluating changes to the draft. The procuring agency considers the comments and recommendations and may choose to incorporate any or all into the final product. Once finalized, the RFP is issued and the procurement proceeds normally.

This system may be especially useful in technology procurements where the state-of-the-art is moving quickly. Under traditional procurement practices, an agency will refuse to communicate with potential bidders so as not to compromise the integrity of the process. However, for extremely complex systems with multiple moving parts

and ongoing technological advances, it may be that a formalized, transparent process for receiving input on a draft RFP is the better solution.

Circulation of draft RFPs is considered one of a number of contracting “best practices.” The Federal Acquisition Guidelines encourage early exchanges of information in a number of ways, including the issuance of draft RFPs: "Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, contracting officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. " (See Federal Acquisition Guidelines, Subpart 15.2, Section 15.201.)

Use of a draft RFP may be of value in the LA-RICS procurement. While not strictly a County procurement, LA-RICS is headed by the County’s Chief Executive Officer and completion of LA-RICS is a top County priority. The procurement of LA-RICS has suffered due to the complex nature of its technology; fast-moving changes in the technology and in Federal law relating to that technology; and, perhaps most of all, the extremely high-stakes nature of the competition. However, given the tight deadlines for this project and the delays experienced so far, it may not be feasible to utilize a draft RFP for some or all aspects of LA-RICS.

**I, THEREFORE, MOVE** that the Chief Executive Officer, Director of Internal Services, Director of Public Works and County Counsel be instructed to conduct a review of County procurement practices and to recommend changes as appropriate that will enhance the County's ability to procure products and services in the most cost-effective, expeditious and fair manner possible; and

**I FURTHER MOVE** that such review include consideration of the use of "draft requests for proposal" and other techniques to promote early exchanges of information in the procurement process, particularly in high-profile and high-technology procurements; and

**I FURTHER MOVE** that the LA-RICS Board be requested to consider incorporating the results of this review into those systems procurements for LA-RICS that have not already been authorized for release, to the extent feasible and practicable; so as to ensure that this highly visible system, which is so critical to public safety in our County, is completed in optimum fashion.